



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

March 22, 1996

Mr. John Steiner
Division Chief
Law Department
City of Austin
P.O. Box 1088
Austin, Texas 78767-1088

OR96-0389

Dear Mr. Steiner:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 38406. The City of Austin received an open records request seeking information in reference to a parking citation. You claim the requested information is excepted from required public disclosure under section 552.103 of the Government Code.¹

The Open Records Act imposes a duty on governmental bodies seeking an open records decision pursuant to section 552.301 to submit that request to the attorney general within ten days after the governmental body's receipt of the request for information. The time limitation found in section 552.301 is an express legislative recognition of the importance of having public information produced in a timely fashion. *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.--Austin 1990, no writ). When a request for an open records decision is not made within the time period prescribed by section 552.301, the requested information is presumed to be public. See Gov't Code § 552.302. This presumption of openness can only be overcome by a compelling demonstration that the information should not be made public. *But see, e.g.,* Open Records Decision No. 150 (1977) (presumption of openness overcome by a showing that the information is made confidential by another source of law or affects third party interests).

¹You also claim that the requested information consists of records of the judiciary and, therefore, is not subject to the Open Records Act. Although section 552.003(1)(B), in defining "Governmental Body," expressly excludes the judiciary, we have no way of confirming whether the requested information consists of records of the judiciary and, consequently, do not address this claim in this letter.


We realize that the short time frame prescribed by section 552.301 may occasionally impose a substantial burden on governmental bodies seeking to comply with the act. Accordingly, when we receive an otherwise timely request for an open records decision that lacks some information necessary for us to make a determination, it has been our policy to give the governmental body an opportunity to complete the request.

On February 9, 1996, we asked you to submit a copy of the specific information requested, clearly marked to indicate which portions apply to the exception you raised, and to submit your written comments explaining the reasons why your stated exception applies, with the caveat that your failure to do so would result in the waiver of the act's discretionary exceptions. To date we have not received your reply.

The Open Records Act places on the custodian of public records the burden of establishing that records are excepted from public disclosure. Attorney General Opinion H-436 (1974). Your request for an open records decision remains incomplete. Without the information requested from you, this office is unable to evaluate your claims under section 552.103. Consequently, we find that you have not met your burden under sections 552.301 through 552.303 of the Government Code and that the requested information is presumed to be public. *See* Open Records Decision No. 195 (1978).

In the absence of a demonstration that the information is confidential by law or that other compelling reasons exist as to why the information should not be made public, you must release the information. *See also* Gov't Code § 552.352 (the distribution of confidential information is a criminal offense). If you have any questions regarding this matter, please contact this office.

Yours very truly,

A handwritten signature in black ink, appearing to read "Todd Reese", with a long horizontal line extending to the right.

Todd Reese
Assistant Attorney General
Open Records Division

RTR/ch

Ref.: ID# 38406

cc: Mr. Dimitri Anastasiadis
10603 Ames Lane
Austin, Texas 78739